

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
SECURITIES AND EXCHANGE COMMISSION, :

Index No. 12-cv-1065 (ADS)

Plaintiff, :

v. :

BRIAN RAYMOND CALLAHAN, :
HORIZON GLOBAL ADVISORS LTD., :
HORIZON GLOBAL ADVISORS LLC, :
DIVERSIFIED GLOBAL INVESTMENTS :
(BVI) L.P., THE MASTERS GLOBAL FUND, :
L.P., FIDUCIARY SELECT INCOME FUND, :
L.P., HORIZON MILLENNIUM :
INVESTMENTS, L.P., PANGAEA OFFSHORE :
HIGH YIELD PORTFOLIO, LLC, ADAM :
MANSON, DISTINCTIVE INVESTMENTS :
LLC AND DISTINCTIVE VENTURES LLC, :

Defendants, :

SHER MANSON CALLAHAN, :

Relief Defendant. :

-----X

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ JUL 25 2012 ★

LONG ISLAND OFFICE

**MEMORANDUM OF DEFENDANT BRIAN RAYMOND CALLAHAN
IN RESPONSE TO THE MOTION OF THE UNITED STATES
TO INTERVENE AND FOR A STAY OF THIS CIVIL ACTION**

Defendant Brian Raymond Callahan ("Callahan") submits this memorandum in response to the motion filed by the United States (the "Government") to intervene in this action and to stay all proceedings in this action, other than proceedings commenced by the temporary receiver appointed by the Court (the "Receiver") pursuant to both the Preliminary Injunction Order entered on March 27, 2012 (the "March 27th Order") and the Stipulation and Preliminary Injunction Order entered on June 4, 2012.

The Government correctly states in its motion papers that Callahan does not object to the intervention of the Government and the stay of proceedings in this civil action generally. Nor does Callahan object to the continuation of the work currently being performed by the Receiver in this action notwithstanding the stay of the civil action.

However, Callahan does not consent to a stay of all proceedings in this civil action to the extent that such a stay would preclude Callahan from seeking relief from the Court concerning the asset freeze ordered by the Court in the March 27th Order. Especially given the existence of the criminal investigation described by the Government in its motion papers, Callahan expects to file with the Court an application to allow Callahan to use certain funds that are currently the subject of the asset freeze for payment of legal fees and expenses that have been incurred in connection with this civil action and will be incurred in connection with the criminal investigation that is currently being conducted by the Government. Callahan should not be precluded from seeking such relief because precluding such an application could violate Callahan's Sixth Amendment right to counsel in connection with the criminal investigation described by the Government. *See SEC v. FTC Capital Markets, Inc.*, No. 09 Civ. 4755, 2010 WL 2652405 at *3 (S.D.N.Y. 2010) (Included among the protections of the Sixth Amendment right to counsel is "an individual's right to choose the lawyer [he desires]."); *SEC v. Coates*, No.

94 Civ. 5361, 1994 WL 455558 at *3 (S.D.N.Y. 1994) (Where there is a civil asset freeze in place and a companion criminal case arises, courts should "pay particular attention to the defendant's Fifth and Sixth Amendment rights.")

Therefore, Callahan respectfully requests that the Court incorporate the following paragraph "5" to the proposed Order submitted by the Government:

5. Nothing herein shall be deemed to preclude defendant Callahan from filing an application with the Court for relief from the asset freeze described in Paragraph I of the Preliminary Injunction Freezing Assets and Granting Other Relief entered on March 27, 2012.

Dated: New York, New York
July 20, 2012

The United States and the SEC are directed to inform the Court by Friday, July 27, 2012 as to whether they oppose the above requested amendment to the Stay Order.
SO ordered.

/s/ Arthur D. Spatt

Arthur D. Spatt, U.S.D.J.
7/25/12

PARK & JENSEN LLP

By: /s/ Robert Knuts
Robert Knuts

Co-Counsel for Defendant Brian Raymond Callahan

630 Third Avenue
New York, NY 10017
(646) 200-6331

HERSKOVITS PLLC

By: /s/ Robert L. Herskovits
Robert L. Herskovits

Co-Counsel for Defendant Brian Raymond Callahan

1065 Avenue of the Americas, 27th Floor
New York, NY 10018
(212) 897-5410